U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25141635

Date: MAY 2, 2023

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish that [redacted][1] the new commercial enterprise (NCE), will create at least 10 full-time positions for qualifying employees per investor. We subsequently dismissed the appeal and a motion to reconsider. The matter is now again before us on a second motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must (1) state the reasons for reconsideration, (2) establish that the decision was based on an incorrect application of law or USCIS policy, and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the petitioner has shown "proper cause" for that action. Thus, to merit reopening or

[1] According to the information provided by the Washington Secretary of State, Corporations and Charities Division, in its database, which is available at https://ccfs.sos.wa.gov/#/BusinessSearch, [redacted] was administratively dissolved on [redacted] 2019 because the entity was no longer in active status for failure to file its annual report that was due on January 31, 2019.

reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee) but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has established that our decision to dismiss the prior motion to reconsider was based on an incorrect application of law or USCIS policy. We, therefore, incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

Throughout her brief on motion, the Petitioner repeatedly states that the Chief erred in denying her petition. However, as explained above, a motion is limited to the prior decision, which is our dismissal of the Petitioner's motion to reconsider, not the Chief's denial of the petition. On motion, the Petitioner does not allege that we erred in our prior decision, and we, therefore, will consider the Petitioner's arguments that the Chief erred only insofar as they may pertain to our prior dismissal on the Petitioner's motion to reconsider. On motion, the Petitioner submits duplicate copies of the previously submitted documents. While we may not address each piece of evidence individually, we have reviewed and considered each one.

As stated above, in order to have established merit for reconsideration of our latest decision, a petitioner must both state the reasons why he or she believes the most recent decision was based on an incorrect application of law or policy and specifically cite laws, regulations, precedent decisions, or binding policies that the petitioner believed we misapplied in that prior decision. Thus, in order to prevail in her motion to reconsider, the Petitioner cannot merely disagree with our conclusions but rather must demonstrate how we erred as a matter of law or policy in that immediate prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

While we acknowledge the Petitioner's claims on motion, the Petitioner does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. In our prior decision, we noted that the Chief terminated the [redacted] designation to participate in the EB-5 program in [redacted] 2018 and that we subsequently dismissed the regional center's appeal on April 16, 2021. We stated that the termination of the regional center reflects a material change in the Petitioner's eligibility that cannot be overcome. *See* 8 C.F.R. § 204.6(m)(7) (stating that a noncitizen seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved to participate within the program and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise). The brief in support of the current motion lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the prior motion to reconsider. The Petitioner reiterates her previous arguments presented in response to the Chief's notice of intent to deny, in support of her appeal of the Chief's decision, and in support of her first motion to reconsider our prior

decision. We thoroughly addressed these assertions in our dismissal of the appeal, dated March 31, 2020, which we incorporate by reference. The Petitioner does not identify any incorrect application of law or policy by us in our prior decision dismissing her first motion, dated June 23, 2021.

The Petitioner has not shown that our prior decision contained errors of law or policy or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

III. CONCLUSION

For the reasons we have discussed above, the Petitioner's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy.

ORDER: The motion to reconsider is dismissed.